



RECEIVED
REGULATORY DIV.

BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

joelle.phillips@bellsouth.com

01 AUG 3 AM 8 40

Joelle J. Phillips
Attorney

OFFICE OF
EXECUTIVE SECRETARY

615 214 6311
Fax 615 214 7406

July 25, 2001

**VIA TELECOPIER
(615) 252-6363**

Henry Walker, Esquire
Boult, Cummings, Conners & Berry
Post Office Box 198062
Nashville, Tennessee 37219-8062

Re: *Second Complaint of Discount Communications Against BellSouth Telecommunications, Inc.*
Docket No. 00-01151

Dear Henry:

It has come to our attention that Discount has failed to pay the \$2800 daily payment as agreed on March 21, 2001. For ease of reference, I attach an excerpt of the transcript of the March 21, 2001 status conference, in which Mr. Collier confirmed that, starting March 22, 2001, Discount would deposit \$2800 for each calendar day (weekend payments to be made by a triple payment on Mondays).

Attached please find a daily record of the actual deposit activity since March 31, 2001, as well as an affidavit from Waring Cox confirming the accuracy of that record. The record demonstrates that Discount has failed to make any payments at all on several days and has regularly failed to make an adequate Monday payment to cover the weekend requirements. Discount failed to make eight of its required payments in April, failed to make eleven of its required payments in May, and failed to make thirteen of its required payments in June. The shortfall created by the failure to pay during this period is \$92,400.

BellSouth's agreement to refrain from terminating service while this matter is pending was premised in part on Discount's commitment to make the daily payments required by the hearing officer. In light of Discount's failure to make the

Henry Walker, Esquire
July 25, 2001
Page 2

required deposits, BellSouth intends to notify the hearing officer of its intent to terminate service to Discount.

Please let me know if you have any questions concerning the deposit records described above.

Cordially,



Joelle Phillips

JP/jej

Enclosure

cc: Timothy Phillips, Esquire (via telecopier)
Guy Hicks

BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE:

SECOND COMPLAINT OF DISCOUNT
COMMUNICATIONS, INC. AGAINST BELLSOUTH
TELECOMMUNICATIONS, INC.

)
)
) Docket No.
) 00-01151
)

COPY

TRANSCRIPT OF PROCEEDINGS

Wednesday, March 21, 2001

APPEARANCES:

For BellSouth:

Mr. Guy M. Hicks
Ms. Joelle Phillips

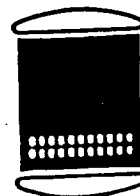
For Discount Communications:

Mr. Henry Walker

For Consumer Advocate:

Mr. Timothy Phillips

Reported By:
Patricia W. Smith, RPR, CCR



NASHVILLE COURT REPORTERS

P.O. Box 290903
Nashville, TN 37229-0903
(615) 885-5798

1 Up until today the payments have been
2 made \$2500 each business day.

3 MR. HICKS: Correct.

4 MR. COLLIER: Going forward, starting
5 tomorrow, it will be \$2800 per calendar day.

6 And as was addressed in the first
7 escrow agreement, as far as payments for over a
8 weekend, I think there was a consolidated payment that
9 had to be made to cover the weekends.

10 MR. WALKER: On Monday they would come
11 in with a check for three days.

12 MR. COLLIER: Okay. That term --
13 whatever that term was in the original agreement would
14 remain in this agreement.

15 And the money will be held by the
16 escrow agent, not disbursed on a weekly basis. And
17 it's my hope that this matter will be resolved fairly
18 soon, so that it won't really be a significant issue.

19 As far as the payment by Discount, I
20 think that should be increased from 5000 to 8000,
21 starting April the 15th, as Mr. Hayes had requested.

22 Does that cover everything?

23 MR. HICKS: I think it does.

24 I have one question about the last
25 statement you made, Mr. Hearing Officer.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee**

In Re: *Second Complaint of Discount Communications Against BellSouth Telecommunications, Inc.*

Docket No. 00-01151

AFFIDAVIT OF KIMBERLY E. SANDS

STATE OF TENNESSEE:

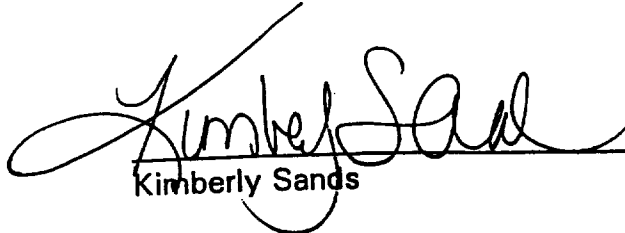
COUNTY OF SHELBY:

Personally appeared before me, the undersigned Notary Public in and for said State and County, Kimberly E. Sands, who has been duly sworn to state the following:


1. My name is Kimberly Sands. I am an adult who makes this Affidavit upon my oath and personal knowledge.
2. I am an attorney with the law firm of Waring Cox, PLC.
3. In connection with the bankruptcy case of ATM Discount Communications and the above captioned proceedings, Waring Cox established an escrow account into which ATM was to deposit funds. Waring Cox monitors the escrow account established at First Tennessee Bank under account number 101137177.
4. Attached to this affidavit is a calendar summary of deposits made by ATM for the period of March 31, 2001 through June 30, 2001.

5. Based on information provided to me by First Tennessee, it does not appear that ATM has complied with the TRA's order of March 22, 2001, which required ATM to make daily deposits of \$2,800.00 into the escrow account..

FURTHER AFFIANT SAITH NOT.

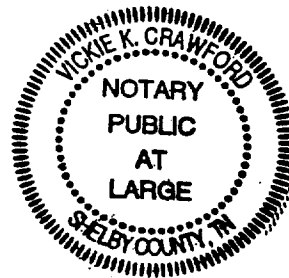

Kimberly Sands

SWORN TO AND SUBSCRIBED before me this 23rd day of July, 2001.


Notary Public

My Commission Expires:

6-13-2004



APRIL, 2001

Total deposits:

\$64,400

Number of week days
without any payment:

8

Monday	Tuesday	Wednesday	Thursday	Friday
2 \$2800 deposit (Saturday, 3/31) \$2800 deposit (Sunday) No Payment for Monday \$5600 TOTAL	3 \$2800 deposit	4 \$2800 deposit	5 \$2800 deposit	6 \$2800 deposit
9 \$2800 deposit (Saturday) \$2800 deposit (Sunday) No Payment for Monday \$5600 TOTAL	10 \$2800 deposit	11 No Payment for Wednesday	12 \$2800 deposit	13 \$2800 deposit
16 \$2800 deposit (Saturday) No Payment for Sunday	17 \$2800 deposit (Monday) \$2800 deposit (Tuesday) \$8000 (prepetition) \$5600 TOTAL	18 No Payment for Wednesday	19 \$2800 deposit	20 \$2800 deposit
23 \$2800 deposit (Saturday) \$2800 deposit (Sunday) No Payment for Monday \$5600 TOTAL	24 \$2800 deposit	25 No Payment for Wednesday	26 \$2800 deposit	27 \$2800 deposit
30 \$2800 deposit (Saturday) \$2800 deposit (Sunday) No Payment for Monday \$5600 TOTAL				

MAY, 2001

Total deposits: Number of week days without any payment:				\$56,000	
				11	
Monday	Tuesday	Wednesday	Thursday	Friday	
	1 \$2800 deposit	2 \$2800 deposit	3 \$2800 deposit	4 No Payment for Friday	
7 \$2800 deposit \$2800 deposit \$2800 deposit \$8400 TOTAL	8 No Payment for Tuesday	9 \$2800 deposit	10 Paid Friday 5/11	11 \$2800 deposit (Thursday) \$2800 deposit (Friday) \$5600 TOTAL	
14 No Payment for Saturday No Payment for Sunday No Payment for Monday	15 \$2800 deposit	16 \$2800 deposit	17 \$2800 deposit	18 \$2800 deposit	
21 \$2800 deposit (Saturday) No Payment for Sunday	22 \$2800 deposit (Monday) \$2800 deposit (Tuesday) \$5600 TOTAL	23 No Payment for Wednesday	24 Paid Friday 5/25	25 \$2800 deposit (Thursday) \$2800 deposit (Friday) \$5600 TOTAL	
28 No Payment for Saturday No Payment for Sunday No Payment for Monday	29 \$2800 deposit	30 No Payment for Wednesday	31 \$2800 deposit		

JUNE, 2001

Total deposits:
\$44,800

Number of week days
without any payment:
13

Monday	Tuesday	Wednesday	Thursday	Friday
				1 \$2800 deposit
4 \$2800 deposit (Saturday) No Payment for Sunday No Payment for Monday	5 \$2800 deposit	6 No Payment for Wednesday	7 \$2800 deposit	8 \$2800 deposit
11 \$2800 deposit (Saturday) No Payment for Sunday No Payment for Monday	12 \$2800 deposit	13 \$2800 deposit	14 No Payment for Thursday	15 \$2800 deposit
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30 No information provided				

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Second Complaint of Discount Communications Against BellSouth Telecommunications, Inc.*

Docket No. 00-01151

**NOTICE REGARDING BREACH OF ESCROW ARRANGEMENT
AND INTENTION TO TERMINATE SERVICE**

BellSouth Telecommunications, Inc. ("BellSouth") provides this notice concerning breach of escrow arrangement and intention to terminate service and respectfully shows the Hearing Officer as follows:

1. On January 31, 2001, a status conference was held regarding the above-referenced matter. At that status conference, BellSouth confirmed that it would provide five days notice to the Hearing Officer prior to terminating service in the event that Discount Communications, Inc. ("Discount") failed to make payments in breach of the escrow agreement between Discount and BellSouth.
2. On Wednesday, July 25, 2001, BellSouth provided Discount with notice that Discount had failed to make the required escrow payments during a period beginning March 31, 2001 through June, 2001. BellSouth attached to that correspondence documentation concerning the deposits to the escrow account made by Discount during that period. That documentation is attached to this Notice as Exhibit "A." As reflected in that documentation, Discount failed to make eight of its required payments in April, failed to make eleven of its required

payments in May, and failed to make thirteen of its required payments in June. The shortfall created by the failure to pay during this period is \$92,400.

3. For the reasons articulated above, BellSouth respectfully provides this notice as agreed at the status conference on January 31, 2001 (transcript excerpt attached as Exhibit "B") in order to provide the Hearing Officer time to consider pending motions. BellSouth intends to terminate service to Discount in five days as a result of the breach of escrow agreement. In the event of such termination, BellSouth continues to be willing to voluntarily agree to accept Discount's customers in the manner outlined on page seven of BellSouth's Response to Discount Communications' Motion to Request BellSouth Telecommunications, Inc. to Continue Service Pending Resolution of this Proceeding (copy attached as Exhibit "C").

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

Guy M. Hicks

Joelle J. Phillips

333 Commerce Street, Suite 2101

Nashville, Tennessee 37201-3300

(615) 214-6301

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2001, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

Henry Walker, Esquire
Boult, Cummings, Conners & Berry
Post Office Box 198062
Nashville, Tennessee 37219-8062

- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

Tim Phillips, Esquire
Consumer Advocate Division
Post Office Box 20207
Nashville, Tennessee 37202

A handwritten signature in black ink, appearing to read "Tim Phillips", written over a horizontal line.

EXHIBIT "A"

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Second Complaint of Discount Communications Against BellSouth Telecommunications, Inc.*

Docket No. 00-01151

AFFIDAVIT OF KIMBERLY E. SANDS

STATE OF TENNESSEE:


COUNTY OF SHELBY:

Personally appeared before me, the undersigned Notary Public in and for said State and County, Kimberly E. Sands, who has been duly sworn to state the following:


1. My name is Kimberly Sands. I am an adult who makes this Affidavit upon my oath and personal knowledge.
2. I am an attorney with the law firm of Waring Cox, PLC.
3. In connection with the bankruptcy case of ATM Discount Communications and the above captioned proceedings, Waring Cox established an escrow account into which ATM was to deposit funds. Waring Cox monitors the escrow account established at First Tennessee Bank under account number 101137177.
4. Attached to this affidavit is a calendar summary of deposits made by ATM for the period of March 31, 2001 through June 30, 2001.

5. Based on information provided to me by First Tennessee, it does not appear that ATM has complied with the TRA's order of March 22, 2001, which required ATM to make daily deposits of \$2,800.00 into the escrow account..

FURTHER AFFIANT SAITH NOT.

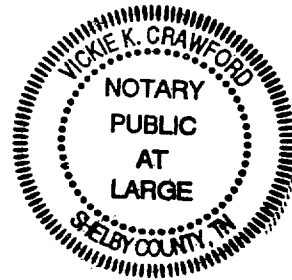

Kimberly Sands

SWORN TO AND SUBSCRIBED before me this 23rd day of July, 2001.


Notary Public

My Commission Expires:

6-13-2004



APRIL, 2001

Total deposits:

\$64,400

Number of week days

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without any payment:

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MAY, 2001

MAY, 2001				Total deposits: Number of week days without any payment:	\$56,000 11
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JUNE, 2001

Total deposits: Number of week days without any payment:				\$44,800 13	
Monday	Tuesday	Wednesday	Thursday	Friday	
				1 \$2800 deposit	
4 \$2800 deposit (Saturday) No Payment for Sunday No Payment for Monday	5 \$2800 deposit	6 No Payment for Wednesday	7 \$2800 deposit	8 \$2800 deposit	
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30 No information provided					

EXHIBIT "B"

COPY

BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE:

SECOND COMPLAINT OF DISCOUNT
COMMUNICATIONS AGAINST BELL SOUTH
TELECOMMUNICATIONS, INC.

)
)
) DOCKET NO.
) 00-01151
)

TRANSCRIPT OF PROCEEDINGS

Wednesday, January 31, 2001

APPEARANCES:

For BellSouth:

Mr. Guy M. Hicks

For Discount
Communications:

Mr. Henry Walker

For Consumer Advocate:

Mr. Vance L. Broemel



NASHVILLE COURT REPORTERS

P.O. Box 290903
Nashville, TN 37229-0903
(615) 885-5798

Reported by:
Donna J. McWhorter, RPR, CCR

NASHVILLE COURT REPORTERS (615) 885-5798

1 issue an order on the matter.

2 MR. WALKER: I guess, then, we can be
3 assured that until such time as you issue a ruling on
4 the matter, that as long as we keep paying our escrow
5 payments, service will continue?

6 MR. BROEMEL: Yeah, we'd like to get
7 that cleared up too, because that's one of our
8 concerns, is if service is discontinued, what happens
9 to the customers. I know the TRA itself, the
10 directors, expressed that. So if this mediation --
11 these dates change any of that, we'd like to know that.

12 HEARING OFFICER: I don't know that
13 the dates will change anything, but if there's a breach
14 of the escrow agreement, I would like five days to be
15 able to act on the pending motions.

16 MR. HICKS: We have no objection to
17 that.

18 MR. BROEMEL: When would the directors
19 look at it? We're concerned with, you know, having
20 this -- really, I think there's a number of issues here
21 that just haven't been addressed because we're not
22 there yet, so, I mean, if they breach the agreement and
23 then five days later you rule, would that mean service
24 would be cut off? We don't think that would be
25 acceptable. We need a meeting, of some sort, of all

EXHIBIT "C"

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

REC'D TN
REGULATORY AUTH.

In Re: *Second Complaint of Discount Communications, Against BellSouth Telecommunications, Inc.*

01 JUN 28 11 0
CLERK OF THE
EXECUTIVE SECRETARY

Docket No. 00-01151

**BELLSOUTH'S RESPONSE TO DISCOUNT COMMUNICATIONS'
MOTION TO REQUIRE BELLSOUTH TELECOMMUNICATIONS,
INC. TO CONTINUE SERVICE PENDING RESOLUTION
OF THIS PROCEEDING**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits that the Tennessee Regulatory Authority (the "Authority") should deny Discount Communications' ("Discount") Motion to Require BellSouth to Continue Service Pending Resolution of this Proceeding (the "Motion"). The Authority should not order BellSouth to continue providing service if Discount is not paying its bills.

On January 5, 2001, Discount filed its Motion, which as will be shown below, erroneously characterized the January 4, 2001 oral deliberations of the United States Bankruptcy Court. On January 9, following a regularly-scheduled Authority Agenda Conference, the Directors discussed the Motion and posed questions to counsel for the parties, including questions regarding the status of the bankruptcy proceeding ATM/Discount Communications, Inc. had initiated on November 2, 2000.¹ During these discussions, BellSouth proposed that no action

¹ In its Motion, Discount claimed that last year it merged with Air Time Management, Inc. and that the Staff advised that Discount need only file a name change request with the Authority rather than a petition to transfer its resale certificate. (Motion, p. 2). On February 14, 2000, Mr. Edward Hayes notified the

services "while the Staff is investigating Discount's complaint." Otherwise, Discount will simply file a new complaint at such time as the Staff finishes its investigation of the most recent complaint. This cycle simply should not be allowed to continue, particularly where it is undisputed that substantial amounts remain unpaid. Assuming BellSouth terminates Discount's services, BellSouth will voluntarily agree to accept Discount's customers based on the following:

BellSouth will assume responsibility for providing service to the existing customers of Discount on the date that BellSouth terminates service to Discount. Beginning on that date, BellSouth will begin changing the service records of Discount's customers to reflect BellSouth as the service provider. Although this process may require several weeks to complete, the change will be effective on the date that BellSouth terminates service to Discount, and BellSouth will not bill Discount for any services to these customers after this termination date. Service to Discount's customers will not be interrupted, and BellSouth will waive the \$20 reconnection charge that is normally applied in this situation. As customers are switched, BellSouth will send a letter to each customer explaining the change in their service provider and advising the customer that they are not obligated to keep their BellSouth service, but are free to choose any other service provider.

Once this conversion is completed, BellSouth will treat these customers in accordance with current tariffs. Any customers with an outstanding balance from a previous BellSouth account will be allowed up to one year to address this outstanding balance under the terms and conditions of BellSouth's Tariff A2.4.3.1. Other matters, including credit history information, deposit requirements (if any), and documentation to qualify for Lifeline service will be addressed under the terms and conditions of the applicable BellSouth tariffs and as required by federal and state law.

BellSouth's proposal is a good faith attempt to address the Directors' concerns with respect to the provision of service to Discount's customers at such time as BellSouth may terminate Discount's service. BellSouth's proposal will